

Date Adopted: 11/28/2017  
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### Resolution 17-104

**A Resolution of the City of Brookings, South Dakota, authorizing the Issuance of its Economic Development Revenue Bonds (South Dakota State University Foundation Project), Series 2017, in an Original Aggregate Principal Amount not to exceed \$9,700,000, for the purpose of providing funds to be loaned to South Dakota State University Foundation, a South Dakota Nonprofit Corporation, for the purpose of Financing Improvements to the Campus of South Dakota State University; approving the form of and authorizing the execution and delivery of a Loan and Security Agreement and a Tax Regulatory Agreement; approving the form of and authorizing the execution and delivery of the Bonds and certain related documents; making certain Findings and Determinations with respect to the Bonds; and providing for the Rights and Remedies of the Holders of the Bonds.**

Whereas, the City of Brookings, South Dakota (the "City") is authorized by South Dakota Codified Laws, Chapter 9-54, as amended (the "Act"), to promote the general economic welfare and prosperity of the State by financing the provision of necessary economic development facilities, including promotion and advancement of postsecondary education; and

Whereas, the South Dakota State University Foundation, a South Dakota nonprofit corporation (the "Foundation") has requested the assistance of the City in connection with paying certain costs of improvements to the Campus of South Dakota State University, which would consist generally of the following (collectively, the "Project"):

- (i) A major expansion and remodeling of the South Dakota State University Performing Arts Center, including construction, equipping and furnishing of such facility; and
- (ii) The construction, equipping and furnishing of a practice gym facility adjacent to the Stanley Marshall HPER academic and athletic facility;

Whereas, specifically, the Foundation has requested that the City issue its Economic Development Revenue Bonds (South Dakota State University Foundation Project), Series 2017 (the "Bonds"), in one or more series in the original aggregate principal amount not to exceed \$9,700,000 to finance costs of the Project in accordance with the terms of a Loan and Security Agreement (the "Loan and Security Agreement") to be entered into by and among the City, the Foundation and one or more of the Purchasers (defined below) pursuant to which the proceeds derived from the sale of the Bonds will be loaned to the Foundation (the "Loan"); and

Whereas, the Foundation has advised the City that First Premier Bank ("First Premier") and First Bank & Trust ("First Bank & Trust" and, together with First Premier and any successor holders of any of the Bonds, the "Purchasers") have agreed to purchase the Bonds;

Now, Therefore, Be It Resolved by the City of Brookings South Dakota, that:

Section 1. The City finds that it is appropriate to finance costs of the Project in order to promote and advance postsecondary education and that the issuance, sale, and delivery of the Bonds are consistent with the purposes of the Act.

Section 2. For the purposes of funding costs of the Project and paying the costs of issuing the Bonds, there are hereby authorized the issuance, sale, and delivery of the Economic Development Revenue Bonds (South Dakota State University Foundation Project), Series 2017 (the "Bonds") in the aggregate principal amount not to exceed \$9,700,000, and such Bonds shall be issued in such principal amounts, shall be numbered, shall be dated, shall mature, shall be subject to redemption prior to maturity, and shall be in such form and have such other details and provisions as are prescribed in the Loan and Security Agreement, substantially in the form now on file with the City. The Bonds shall bear interest at the rates specified in the Loan and Security Agreement. The form of Bonds is approved in substantially the form on file with the City Clerk, subject to such changes not inconsistent with this Resolution and applicable law that are approved by the Mayor and Finance Director. The issuance and delivery of the Bonds shall be conclusive evidence that the Mayor and Finance Director have approved all provisions of the Bonds as issued and any changes to the form of the Bonds on file with the City on the date hereof.

Section 3. The Bonds shall be special obligations of the City payable solely from the revenues and other funds pledged pursuant to the Loan and Security Agreement. The Mayor, Finance Director and City Clerk and other officers of the City (the "City Officials") are hereby authorized and directed to enter into, execute, and deliver the Loan and Security Agreement, and are hereby authorized and directed to execute and deliver the Bonds in accordance with the terms of the Loan and Security Agreement, and it is hereby provided that the Loan and Security Agreement shall provide the terms and conditions, covenants, rights, obligations, duties, and agreements of the Purchasers, the City, and the Foundation, as set forth therein.

All the provisions of the Loan and Security Agreement, when executed as authorized herein, shall be deemed to be a part of this Resolution as fully and to the same extent as if incorporated verbatim herein and shall be in full force and effect from the date of execution and delivery of the Loan and Security Agreement. The Loan and Security Agreement shall be substantially in the form now on file with the City, with such necessary and appropriate variations, omissions, and insertions as do not materially change the substance thereof, or as the Mayor and Finance Director, in their discretion, shall determine, and the execution and delivery thereof by the City Officials shall be conclusive evidence of such determination.

Section 4. The City Officials are hereby authorized and directed to enter into, execute, and deliver the Loan and Security Agreement, providing for the loan of the proceeds derived from the sale of the Bonds to the Foundation.

Section 5. First Premier, as the Depository ("Depository") is hereby appointed the custodian of the funds and accounts created under the Loan and Security Agreement and the authenticating agent, paying agent, and registrar with respect to the Bonds.

Section 6. The City hereby approves the execution and delivery by the Foundation of: (i) a Tax Regulatory Agreement among the City, the Foundation and the Depository (the "Tax Regulatory Agreement"), and (ii) all other documents, instruments, and security of any nature provided by the Foundation to the City, or to the Purchasers.

Section 7. The City Officials are hereby authorized to execute and deliver, on behalf of the City, the Tax Regulatory Agreement and such other certificates, instruments, and other documents as are necessary, customary, or appropriate in connection with the issuance, sale, and delivery of the Bonds, or are necessary to establish the validity or enforceability of the Bonds, or are required by bond counsel to establish the validity or enforceability of the Bonds or the exclusion from gross income of interest on the Bonds for purposes of federal income taxation and State of South Dakota taxation (including a certificate as to the status of the Bonds as not being "arbitrage bonds," an Information Return for Tax-Exempt Private Activity Bond Issues, Form 8038), and any UCC-1 financing statements.

Section 8. The City expects that the City (together with any subsidiary entities under the control of the City and any entities that issue obligations on behalf of the City) will not issue tax-exempt obligations in calendar year 2017 which, along with the Bonds, would aggregate more than \$10,000,000. Accordingly, the Bonds are hereby designated as "qualified tax-exempt obligations" within the meaning of Section 265(b)(3)(B) of the Code.

Section 9. All covenants, stipulations, obligations, and agreements of the City contained in this Resolution and the aforementioned certificates, instruments, and documents shall be deemed to be the covenants, stipulations, obligations, and agreements of the City to the full extent authorized or permitted by law, and all such covenants, stipulations, obligations, and agreements shall be binding upon the City. No covenant, stipulation, obligation, or agreement herein contained or contained in the aforementioned certificates, instruments, or documents shall be deemed to be a covenant, stipulation, obligation, or agreement of any member of the City Council of the City, or any officer, agent, or employee of the City in that person's individual capacity, and neither the City Council of the City nor any officer or employee executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

No provision, covenant, or agreement contained in the aforementioned certificates, instruments, or documents, or in the Bonds, or in any other document related to the Bonds, and no obligation therein or herein imposed upon the City or the breach thereof, shall constitute or give rise to any pecuniary liability of the City or any charge upon its general credit or taxing powers. The Bonds shall never constitute an indebtedness of the City within the meaning of any provision or limitation of the South Dakota Constitution or statutes, or the City Charter and shall not constitute or give rise to any pecuniary liability of the City or any charge upon its general credit or taxing powers. In making the agreements, provisions, covenants, and representations set forth in such documents, the City has not obligated itself to pay or remit any funds or revenues, other than funds and revenues derived from the Loan and Security Agreement which are to be applied to the payment of the Bonds, as provided therein and in the Loan and Security Agreement.

Section 10. Except as herein otherwise expressly provided, nothing in this Resolution or in the aforementioned documents, expressed or implied, is intended or shall be construed to confer upon any person or firm or corporation, other than the City or any owner of the Bonds issued under the provisions of this Resolution any right, remedy, or claim, legal or equitable, under and by reason of this Resolution or any provision hereof, this Resolution, the aforementioned documents, and all of their provisions being intended to be and being for the sole and exclusive benefit of the City and any owner from time to time of the Bonds issued under the provisions of this Resolution.

Section 11. In case any one or more of the provisions of this Resolution, or of the aforementioned documents, or of the Bonds issued hereunder shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Resolution, or of the aforementioned documents, or of the Bonds, but this Resolution, the aforementioned documents, and the Bonds shall be construed and endorsed as if such illegal or invalid provision had not been contained therein. All of the aforementioned documents are on file in the office of the Finance Director and are available for inspection by any interested party.

Section 12. The Bonds, when executed and delivered, shall contain a recital that they are issued pursuant to the Act, and such recital shall be conclusive evidence of the validity of the Bonds and the regularity of the issuance thereof and that all acts, conditions, and things required by the laws of the State relating to the adoption of this Resolution, to the issuance of the Bonds, and to the execution of the aforementioned documents to happen, exist, and be performed precedent to and in the enactment of this Resolution, and precedent to issuance of the Bonds, and precedent to the execution of the aforementioned documents have happened, exist, and have been performed as so required by law.

Section 13. The City Officials are hereby authorized to do all acts and things required of them by or in connection with this Resolution, the aforementioned certificates, instruments, or documents, and the Bonds for the full, punctual, and

complete performance of all the terms, covenants, and agreements contained in the Bonds, the aforementioned certificates, instruments, and documents, and this Resolution. In the event that for any reason any City Official is unable to carry out the execution of any of the documents or other acts provided herein, any person delegated the authority to act on behalf of such City Official is hereby authorized to act in the capacity of such City Official and undertake such execution or acts on behalf of the City with full force and effect, which executions or acts shall be valid and binding on the City. If the person whose signature appears on any of the foregoing certificates, instruments, or documents shall cease to be a City Official before the date of issuance of the Bonds such signature shall, nevertheless, be valid and sufficient for all purposes.

Section 14. The City shall publish this Resolution after its passage. The City shall not issue the Bonds authorized hereunder if within twenty (20) days after publication of this Resolution there shall be filed with the City a petition requesting a referendum in the form required by, and signed by the requisite number of voters as provided in, Section 9-20-6 of the South Dakota Codified Laws, in which event, this Resolution shall not become operative and the City shall not issue the Bonds unless and until the requirements of Section 9-20-5 of the South Dakota Codified Laws are satisfied. In addition, the Bonds shall not be issued until after (a) a public hearing is held as provided by Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code") and (b) the issuance of the Bonds is approved following such public hearing by the applicable elected representative of the City as provided by Section 147(f)(2) of the Code.

Section 15. All prior resolutions or Resolutions which conflict with the provisions of this Resolution are hereby repealed to the extent of such conflict.

Passed and Approved this 28<sup>th</sup> day of November, 2017.

CITY OF BROOKINGS



Keith W. Corbett, Mayor

ATTEST:



  
Shari Thornes, City Clerk